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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,594	08/05/2003	John Mendonca	200310372-2	1381

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EXAMINER

VEILLARD, JACQUES

ART UNIT PAPER NUMBER

2165

DATE MAILED: 03/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/635,594	<b>Applicant(s)</b> MENDONCA ET AL.	
	<b>Examiner</b> Jacques Veillard	<b>Art Unit</b> 2165	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/17/04; 3/24/05</u> | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This action is responsive to the applicant's communication filed 8/5/2003.
2. Claims 1-28 are pending and presented for examination.

### *Priority*

3. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged.

### *Information Disclosure Statement*

4. The information disclosure statement (IDS) submitted on 3/17/04 and 3/24/05 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been placed in the application file and has been considered as to the merits.

### *Specification*

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: It appears that the specification fails to provide antecedent basis for the claim terminology "**computer-usable medium**" recites in claims 19-28.

### *Claim Rejections - 35 USC § 112*

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 1-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation of “said database systems” recites in claim 1 line 13; claim 10 line 2; claim 20 line 15; claim 25 lines 12 and 14; claim 27 line 23, and claim 28 lines 8 and 11. There is insufficient antecedent basis for this limitation in the claim.

The term “**many**” recites on line 6 in claim 1 is a relative term, which renders the claim indefinite. The term “**many**” is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonable appraised of the scope of the invention. The limitation “**many**” is indefinite due to the possible meanings of the word, more, most, a large number of persons or things, the great majority of people. Furthermore given “**many**” any of the common and broadest definitions it is unclear to the examiner what the limitation “**many**” is intended to cover.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: the preamble references a system for archiving and restoring data... However, the functionality recited in the body of claim 1 doesn't appear to produce a tangible result nor does it appear to actually support the preamble. Those steps do not appear to result in automatically restoring data as recited in the preamble, instead being inaccurate or incomplete.

As per claims 9 and 19, the steps recited in the body of the claim do not appear to result in automatically archiving data as recited in the preamble. Therefore, the claims appear inaccurate or incomplete under 35 U.S.C. 112, second paragraph.

Any claim not directly rejected on 35 U.S.C. 112, second paragraph stands rejected due to its dependency in virtue to their base claims.

***Claim Rejections - 35 USC § 101***

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 1-8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter, specifically directed towards a software, per se.

As per claim 1, it is unclear that the claim is whether limited to embodiment, which include hardware. The term “databases” in and of itself is sufficiently broad to encompass just the software that sets forth the framework for the data. There’s noting in the specification indicated it necessarily is referring to the combination of the software and hardware, and both the cell manager and the media agent are reasonably interpreted as software routines, claim 1, therefore, appears to be software, per se, which is not statutory.

Furthermore, the preamble references a system while the functionality recited in the body of claim 1 refers to software, per se. The claim doesn’t appear to produce a useful, concrete and tangible result nor does it appear to actually support the preamble. Therefore, the claim cannot be placed in one of four categories of an invention as required by the MPEP 2105.

***Examiner remarks***

9. The examiner asserts that claim 9 is statutory because causing a port to open, receive data, and close appears to produce a useful, concrete and tangible result.

Regarding claim 19, it is also statutory based on the same analysis to claim 9. Even though the claim recites the limitation "computer-usable medium". The examiner think the "medium" is limited to tangible, physical articles or objects in the context of the claim and does not appear intended to cover forms of energy, per se, such as: transmission media in form of signals, waves or other types of energy.

***Allowable Subject Matter***

10. Independent claims 1, 9, and 19 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph and 35 U.S.C. 101 set forth in this office action. When the rejection(s) under 35 U.S.C. 112, second paragraph and 35 U.S.C. 101 are overcome the dependent claims will also be allowable.

***Other Prior Art Made Of Record***

11. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. U.S. patents and U.S. patent application publications will not be supplied with Office actions. Examiners advises the Applicant that the cited U.S. patents and patent application publications are available for download via the Office's PAIR. As an alternate source, all U.S. patents and patent application publications are available on the USPTO web site ([www.uspto.gov](http://www.uspto.gov)), from the Office of Public Records and from commercial sources. For the use

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of the Office's PAIR system, Applicants may refer to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197.

### ***Points Of Contact***

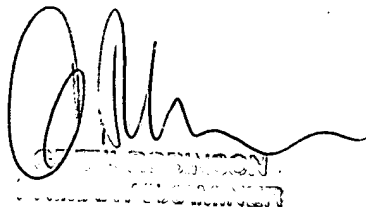
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacques Veillard whose telephone number is (571) 272-4086. The examiner can normally be reached on Mon. to Fri. from 9 AM to 4:30 PM, alt. Fri. off..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached on (571) 272- 4146. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

J.V  
Jacques Veillard  
Patent Examiner TC 2100

March 13, 2006

A handwritten signature in black ink, appearing to read 'J. Veillard', with a stylized flourish extending to the right. Below the signature is a rectangular stamp with the text 'JACQUES VEILLARD' and 'PATENT EXAMINER'.